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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,691	11/09/2000	Henk J. Bots	21055-701	5696

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EXAMINER	
BADERMAN, SCOTT T	
ART UNIT	**PAPER NUMBER**
2113	

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/710,691	BOTS ET AL.	
	Examiner	Art Unit	
	Scott T. Baderman	2113	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 April 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *12-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *12-20 and 23-31* is/are rejected.

7)☒ Claim(s) *21 and 22* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 November 2000* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Allowable Subject Matter

1. Claims 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 12-20 and 23-31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,226,748, respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

With regard to claims 12, 13 and 23, the inclusion of the limitations "determining **if** the data packet is being sent between members of the virtual private network, and **if** so...(emphasis added)" in instant claim 12, is an obvious expedient of patented claim 1 because the term "determining" suggests the two results – a positive ("if so") and a negative ("if not"). A person skilled in the art could broadly read patented claim 1 and be led to believe that patented claim 1 includes the possibility of "determining **if** the data packet is being sent between members of the virtual private network, and **if** so..." based on the above obvious interpretation of "determining."

Further, claim 1 of the patent includes all of the limitations in claim 12 of the instant application. With regard to the additional limitations in claim 1 of the patent (providing authentication), which are not included in claim 12 of the instant application, the omission of these limitations in claim 12 of the instant application is an obvious expedient since the remaining limitations in claim 1 of the patent perform the same function as the limitations in claim 12 of the instant application (*In re Karlson*, 136 USPQ 184 (CCPA 1963)).

With regard to claims 14-16, patented claim 1 includes the limitations "determining the packet manipulation rules for packets **sent between members of the virtual private network**, and **forming a secure data packet by executing the packet manipulation rules** on the data packet, wherein the step of determining the packet manipulation rules comprises the steps of identifying an encryption algorithm and wherein the step of forming a secure data packet comprises the step of encrypting (emphasis added)". Based on this limitation, it would have been suggested to a person skilled in the art that packet manipulation rules are only determined for packets sent between members, and that since forming a secure data packet is done by executing

these packet manipulation rules, it would have also been suggested to a person skilled in the art that forming a secure data packet is only done for packets sent between members. Based on this, it is clear that if a data packet is not sent between members, then no packet manipulation rules are determined and no secure data packet (including encryption and compression) is formed.

With respect to claim 17, the fact that patented claim 1 is dealing with a method for sending a data packet between members of a virtual private network would have suggested to a person skilled in the art that the steps therein occur within a virtual private network unit.

With respect to claim 18, it would have been suggested to a person skilled in the art that the virtual private network is implemented in software and that the lookup table is located in memory because a person skilled in the art would have understood that the steps of receiving, determining and forming are all software processes and that "accessing" a lookup table is similar to accessing a memory.

With respect to claims 19 and 20, "Official Notice" is taken that it is well known that a virtual private network, and the units associated with it, are placed between a gateway device and the Internet or local area network.

With respect to claims 24-31, these claims are system claims that perform the method described in claims 12-23 of the instant application. It would have been obvious to a person

skilled in the art to implement the computer implemented method described in claims 12-23 into a system since the method is described in such a way as being performed by a computer system.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott T. Baderman whose telephone number is (571) 272-3644. The examiner can normally be reached on Monday-Friday, 6:45 AM-4:15 PM, first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott T Baderman
Primary Examiner
Art Unit 2113

STB